IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

CRL.A.No. 1100 of 2004(B)

SC.374/2001 of ADDL. DISTRICT & SESSIONS COURT (ADHOC), FAST TRACK COURT - I, PATHANAMTHITTA

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APPELLANT: ACCUSED.

RAGHAVAN, AGED 55 YEARS, S/O.THEVAN,
HOUSE, NO.870, THYNILKKUNNATHIL LAKSHAM VEEDU
COLONY, KIDANGOOR MURI AND VILLAGE,
KOZHENCHERRY TALUK.

BY ADVS. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD
SRI.VIKANTH K.PUTHUMANA

RESPONDENTS: COMPLAINANTS.

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. EXCISE INSPECTOR, EXCISE RANGE OFFICE,
PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A. NO.7806 OF 2004 IN CRL. APPEAL NO.1100 OF 2004.

DISMISSED

6.12.2006 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 1100 OF 2004

Dated this the 6th day of December, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.374 of 2001 on the file of the Additional District and Sessions Court (Ad hoc) Fast Track Court-I, Pathanamthitta. He faced trial for the offence punishable under Section 8(1) and (2) of the Abkari Act.

2. The prosecution case was that on 6.5.1998 at 6.15 P.M. while PWs.1 and 2 were on patrol duty, they found the accused walking through the Panchayat road carrying a black cannas in his hand. On seeing the excise party, though the appellant tried to escape, the excise party stopped him and questioned him and on examining the cannas it was found that the cannas contained 1 ½ litres of arrack. PW.1 seized the cannas as per Ext.P1 seizure mahazar, sample of 300 ml. was taken for chemical analysis and arrested the appellant. To prove the case against the appellant, the prosecution examined PWs.1 to 4 and produced Exts.P1 to P8 as well as MO.1 cannas containing the arrack. After closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The

appellant denied the allegation levelled against him and stated that the case was falsely foisted against him by the excise officials. However, accepting the oral and documentary evidence adduced by the prosecution, the trial court found the appellant guilty under Section 8(1) read with Section 8(2) of the Abkari Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of two years. The above conviction and sentence are challenged in this appeal.

3. This Court heard the learned counsel for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the trial court went wrong in placing reliance on the evidence of the prosecution witnesses who were official witnesses and that there was no independent witness to prove the case against the appellant. Counsel further submits that the official witnesses had not complied with the provisions of the Excise Manual and Section 50 of the Abkari Act with regard to questioning of witnesses and recording their statement as there occurred a delay of two years. Further, counsel submits that PW.1 had not complied

with Section 53 of the Abkari Act as only one sample was taken from the contraband article for chemical analysis. The learned Public Prosecutor, on the other hand, submits that the findings entered by the trial court are correct and the conviction and sentence ordered against the appellant requires no interference.

5. PW.1 was the Preventive Officer who detected the crime. He deposed before the court below that while he and PW.2 were on patrol duty, he saw the appellant carrying a cannas in his hand and on examining the cannas, it was found that the cannas contained 1 ½ litres of arrack without any permit or license as per the provisions of the Abkari Act. PW.1 further stated that he seized the cannas as per Ext.P1 mahazar, collected 300 ml. of arrack as sample for chemical analysis, arrested the appellant and produced him along with the contraband article before the court the next day. Ext.P7 is the chemical examination certificate which shows that the sample contained 42.39% by volume of ethyl alcohol. The evidence of PW.1 is supported by the evidence of PW.2 who deposed that he had accompanied PW.1 at the time of detection of the crime. PW.3 is an independent witness who attested Ext.P1 seizure mahazar. He turned hostile to the prosecution and stated that he was not present at the scene of occurrence. PW.4 was the Excise Inspector who conducted investigation

and laid the charge sheet.

6. With regard to the contention of the learned counsel appearing for the appellant that there was no independent witness to prove the case against the appellant, this Court is of the view that though PW.3 turned hostile to the prosecution, he had admitted his signature in Ext.P1 mahazar and that would show that he was present at the scene of occurrence. That apart, the evidence of PWs.1 and 2 was not shattered even on cross-examination. With regard to the delay in recording the statement of witnesses, it is seen that PWs.1, 2 and 4 were official witnesses and PWs.1 and 2 had given evidence before the court as to what had happened on 6.5.1998. Hence, it cannot be said that the delay occurred in recording the statement had caused any prejudice to the appellant. The next contention is regarding the non-compliance of the provisions of the Excise Manual and Section 53 of the Abkari Act. Even though the Excise Manual gives a direction to the excise officials to take more than one sample, the defence has no case that the sample taken by PW.1 from the contraband article seized from the appellant was not sufficient for chemical analysis. As per Ext.P7 chemical examination certificate, the sample contained 42.39% by volume of ethyl alcohol. Hence, this Court is of the view that the trial court was absolutely correct in placing reliance on the evidence adduced

by the prosecution to find the appellant guilty under Section 8(1) and (2) of the Abkari Act. The conviction entered against the appellant, therefore, requires no interference.

7. The next question is with regard to the sentence awarded by the trial court. Learned counsel for the appellant submits that the appellant is an aged person, rustic and illiterate, and he is the only member to support his three children and old parents and hence seeks some leniency in the sentence awarded by the trial court. The trial court had also considered this point and found that the appellant was a first offender. However, the court below sentenced him to undergo rigorous imprisonment for a period of two years and simple imprisonment for a further period of two years in default of payment of fine. Considering all these aspects, this Court is of the view that the appellant deserves some leniency.

8. In the above circumstances, the substantive sentence of rigorous imprisonment for a period of two years ordered against the appellant - accused in Sessions Case No.374 of 2001 on the file of the Additional District and Sessions (Ad hoc) Fast Track Court I, Pathanamthitta is confirmed whereas the sentence of simple imprisonment of two years ordered for default in payment of fine is reduced to simple imprisonment

for a period of five months. It is reported that the appellant is undergoing imprisonment from the date of the judgment of the court below and he has not been released on bail. The appellant has, therefore, undergone imprisonment for more than two years and six months. Hence, the appellant shall be released forthwith, if he is not wanted in connection with any other case.

The Crl. Appeal is allowed as above.

(K.THANKAPPAN, JUDGE)

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